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## *Town of Yountville*

July 19, 2001

Fair Political Practices Commission  
Attn: Jody Feldman/ John Wallace  
4228 J Street, Suite 800  
Sacramento, California 95814

RE: Comments on the new Conflict of Interest Rules

Dear Jody Feldman and John Wallace:

The public officials in the Town of Yountville have submitted a number of requests for conflict opinions under the new rules enacted this year. As requested in your memo of July 12, 2001, this letter is intended to provide comments to the FPPC specifically regarding the 500-foot rule and the public generally exceptions.

### The 500-foot rule in general

The Town of Yountville is a very small town in the Napa Valley both in population and in area. The Town encompasses an area of just 1.56 square miles and as of January 1, 2000 had a population of 3,768. Therefore, the application of the new 500-foot rule in our small jurisdiction has been extremely difficult. As you can see by the enclosed conflict of interest and zoning maps, many of the councilmembers have conflicts over much of the area of the Town, particularly our small commercial zone. One or more of our councilmembers have been disqualified on almost every significant issue that has come to the Council since the new rules were adopted. The Council urges the FPPC to readopt the 300-foot standard, at least for small jurisdictions.

With these common conflicts, our councilmembers look to the public generally exception for relief. However, advice letters have not given the councilmembers clear immunity under this exception. Without this clear immunity, the councilmembers usually choose not to participate rather than take the risk of violating the conflict of interest rules.

Regulation 18704.2(a)(5). Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property and Improvements to Public Facilities

Further clarification is necessary on the relationship of the 500-foot rule and the public improvement provision of 18704.2(a)(5). This new subsection requires further definition. In particular:

1. What is the definition of "improvement"? Where is the line between replacement and improvement? If the old terra cotta sewer pipes in a public official's neighborhood are replaced with modern materials (since terra cotta is no longer available or practical), would that project be a replacement or an improvement? Has the real property received a new or improved service? If the decision is whether to repave a street exactly the same as the old street, is there a conflict of interest? Since the street paving is not a "new or improved" service under (5) and is simply the replacement of an existing street, the real property is not the "subject of the governmental decision" and therefore arguably not a conflict under the rule. However, we have received informal telephone advice from the FPPC that this situation would be a conflict, simply because it is within 500 feet. A written clarification of the rule is necessary and we would urge the FPPC to find that repairs and maintenance of public facilities within a 500-foot radius of real property interests are not a direct interest.
2. What are similar facilities to streets, water, and sewage? What about lighting provided by the city. Is this a similar facility?

Regulation 18707.1(b)(1)(B). Public Generally Exception. Significant Segment for Real Property

Under the "public generally" exception, the current significant segment standards used include "home owners" or "property owners" and the term "households" has been eliminated. In the past, "households" was the term of choice in Yountville, since each house or mobile home could be counted on a map. In Yountville, the use of "homeowners" or "property owners" can yield very different results because two large mobile home communities occupy the property at the south end of our Town. The residents of these mobile homes are "homeowners" since they own their individual coaches. However, they are not owners of the underlying property and therefore are not "property owners." Therefore, there are over 300 "homeowners" in the south end of our Town, but only 2 "property owners."

In practical terms, how do we use these terms in our analysis of the "public generally" exception? Do we spend our time going through the property tax rolls to determine who actually owns the properties or homes? Do we have to count each co-owner of a parcel? How do we treat rentals, particularly if one "property owner" owns blocks of rentals? Clarification of these terms is necessary and we would strongly urge the FPPC to reinstate the alternative standard of "households." An alternative method the FPPC could consider would be to use terms consistent with the "housing unit" standard reported by the U.S. Census Bureau. Instead of spending time looking through tax rolls, we could simply count the houses on the map, or refer to the census information.

Regulation 18707.3. Public Generally – Small Jurisdictions: Principle Residence.

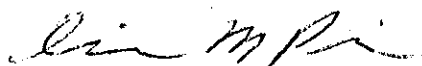
The "public generally" exception for small jurisdictions does not offer any relief for the public officials in the Town of Yountville. Since most of our conflicts arise from the 500-foot rule (see above), the inclusion of the 500-foot requirement in subsection (3) generally eliminates our use of the exception. Additionally, the limited "principle residence" scope of the rule is too narrow to be useful. We strongly urge the FPPC to expand the scope of the rule to include all real property interests and to leave the standard in this section at 300 feet. These changes would alleviate the conflict of interest issues in jurisdictions small in area such as Yountville. To narrowly tailor the preferential 300-foot rule, the exception could be limited to jurisdictions small in area as well as by population. Alternatively, the FPPC could simply create a new rule for jurisdictions that are small geographically, instead of the current focus on population.

Regulation 18707.9. Public Generally Exception – Residential Properties.

Finally, clarification is necessary regarding the "public generally" exception for rental properties contained in 18707.9 (a). On its face the rule seems straightforward and provides that if a public official has a conflict of interest for a real property interest and the official owns less than three "residential properties," that conflict is excepted if 5,000 or ten percent or more of all property owners or homeowners in the jurisdiction are affected by the decision. The plain language of the exception does not appear to be limited by purpose or scope of the governmental action. However, subsection (b) creates further exceptions for rent control and landlord/tenant issues. Several summaries published by the FPPC and other private firms claim that subsection (a) is limited by subsection (b). This issue needs clarification.

Thank you for considering our comments to the new rules. We appreciate your consideration of the issues presented in our small town.

Sincerely,



Diane M. Price  
Town Attorney

cc: Mayor & Town Council  
Nancy Weiss, Town Administrator

Enclosures